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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. FARAND THOMAS HOAGLIN, SR., Defendant and Appellant.	A156216 (Mendocino County Super. Ct. Nos. SCUK-CRCR-17-91870, SCUK-CRPR-18-28158)

Farand Thomas Hoaglin, Sr., pled no contest to second degree robbery, admitted a prior strike conviction, and was sentenced to six years in prison. He also admitted an unrelated violation of postrelease community supervision and received a 180-day concurrent jail term. His appellate counsel has filed a brief raising no issues but seeking our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Hoaglin has filed a supplemental brief. We order two corrections to the abstract of judgment and otherwise affirm.

BACKGROUND

In February 2017, Hoaglin was convicted of firearm possession by a felon (Pen. Code, § 29800, subd. (a)(1))[1] and sentenced to four years in prison. The following October, while Hoaglin was still in prison, a felony complaint (No. SCUK-CRCR-17-91870) was filed against him with charges stemming from a July 2016 incident: kidnapping during a carjacking (§ 209.5, subd. (a)); kidnapping to commit robbery

[1] Undesignated statutory references are to the Penal Code.

(§ 209, subd. (b)(1)); dissuading a witness (§ 136.1, subd. (b)(1)); and dissuading a witness by force or threat (§ 136.1, subd. (c)(1)). As to the count of kidnapping to commit robbery, it was alleged Hoaglin personally used a firearm. (§ 12022.53, subd. (b).) As to all counts, it was alleged he had three prior strike convictions, three prior serious felony convictions, and three prior prison terms. (§§ 667; 667.5, subd. (b).)

Hoaglin was released from prison on postrelease community supervision in April 2018, but he failed to stay in contact with the probation department. The department petitioned to revoke his community supervision status (No. SCUK-CRPR-18-28158). Hoaglin was taken into custody in May 2018, and he was advised at that time of the new felony complaint.

At an August 2018 hearing on the new felony complaint, Hoaglin pled no contest to a new count of second degree robbery (§§ 211, 212.5), admitted one prior strike conviction, and all other counts and allegations were dismissed. The court confirmed a factual basis for the plea based on defense counsel's stipulation to the prosecutor's representation that "[o]n July 23rd, 2016, in the County of Mendocino, the defendant, along with others, approached·[the victim, a]nd by means of force or fear took from him certain personal property; to wit, a wallet, cash and cell phone." The court also accepted Hoaglin's admission to the unrelated violation of postrelease community supervision.

At sentencing in October 2018, the court considered the probation presentence report and, as anticipated in the negotiated disposition, sentenced Hoaglin to six years in prison in the robbery case—the middle three-year term, doubled due to the prior strike conviction (see §§ 213, subd. (a)(2), 667, subd. (e)(1))—with a concurrent term of 180 days in jail for the community supervision violation. In the robbery case, the court awarded 146 days of actual presentence custody credits and 21 days of presentence conduct credits (§§ 2900.5, subd. (a), 4019, subd. (a)(4)), which were limited to 15 percent of actual credits (§§ 2933.1, subd. (c), 667.5, subd. (c)(9)). The court rejected Hoaglin's request for credits dating back to October 2017 when the new felony complaint was filed. In the community supervision revocation case, the court awarded 146 days of actual presentence custody credits.

The court also imposed a $40 court operations assessment (§ 1465.8), a $71 local crime prevention fine (§ 1202.5, subd. (a)), $1,800 restitution and parole revocation fines (§§ 1202.4, subd. (b), 1202.45), victim restitution in an amount to be determined, and a $30 conviction assessment (Gov. Code, § 70373).

DISCUSSION

A.

Appointed counsel filed a *Wende* brief raising no issues and advised Hoaglin of his right to file a supplemental brief. Arguments raised in Hoaglin's supplemental brief relate to the filing of the October 2017 complaint and his arraignment on the matter in May 2018.

1.

Hoaglin argues his constitutional and statutory speedy trial rights were violated by the seven-month delay between the filing of the complaint and his arraignment. (§ 1381.) Speedy trial claims, however, are not cognizable on appeal following a no contest plea even if a trial court issues a certificate of probable cause. (*People v. Hernandez* (1992) 6 Cal.App.4th 1355, 1357–1358, 1361.)

2.

Hoaglin argues the court erred in rejecting his request for additional presentence custody credits. (See *People v. French* (2008) 43 Cal.4th 36, 43 [sentencing issues not affecting a plea's validity may be raised on appeal without a certificate of probable cause].) He seeks credit dating back to October 18, 2017—the date the complaint was filed, and when he was in prison for the February 2017 firearm possession conviction. However, a "defendant is not entitled to presentence custody credits when he or she is charged with a crime while already incarcerated and serving a sentence on a separate . . . crime." (*People v. Gisbert* (2012) 205 Cal.App.4th 277, 281.) Hoaglin received credit for his custody from the time he was arrested on the new matters in May 2018 to his October 2018 sentencing. There was no error.

3.

Hoaglin also argues his trial counsel was ineffective by failing to investigate the charges in the robbery case. Hoaglin provides no factual support for the claim, and we reject it. (See *People v. Bolin* (1998) 18 Cal.4th 297, 334.)

B.

In addition to considering claims raised by Hoaglin in his supplemental brief, we have independently reviewed the entire record for potential error. (*People v. Kelly* (2006) 40 Cal.4th 106, 124.) Apart from two needed corrections to the abstract of judgment, we find no error.

1.

The court properly ensured that, before Hoaglin pled no contest to robbery and admitted his prior strike conviction, he knowingly, intelligently and voluntarily waived his constitutional rights to trial by jury, confrontation of witnesses, and privilege against self-incrimination; and he understood the consequences of his plea and admission, including the maximum sentence and period of parole, restitution liability, and effects of the serious felony conviction, including restrictions on conduct credits and increased future criminal consequences. (*Boykin v. Alabama* (1969) 395 U.S. 238, 242–244; *In re Tahl* (1969) 1 Cal.3d 122, 130; *Bunnell v. Superior Court* (1975) 13 Cal.3d 592, 602–604.)

The court also confirmed Hoaglin had the assistance of counsel in deciding whether to make the plea and admission and confirmed a factual basis for the plea (§ 1192.5). During the colloquy on the robbery case, the court also ensured Hoaglin understood he could face up to 180 days of confinement for admitting the postrelease community supervision violation. (§ 3455, subds. (a), (d); see *People v. Garcia* (1977) 67 Cal.App.3d 134, 137 [*Boykin*/*Tahl* requirements inapplicable to admission of probation violation].)

2.

The record is inconsistent about whether the court terminated postrelease community supervision or revoked and reinstated it. On August 21, 2018, the court made

an oral finding of a postrelease community supervision violation and signed a written order to "revoke and reinstate Post Release Community Supervision with 180 days in county jail" with an unspecified amount of credit for time served. At the October 2018 sentencing, the court stated from the bench: "I would permanently revoke his [postrelease community supervision], order that he serve 180 days in county jail . . . [¶] . . . [¶] . . . concurrent to his [prison] commitment," and "his [postrelease community supervision] is deemed unsuccessfully terminated as of today." The abstract of judgment states execution of sentencing was imposed in the community supervision revocation case (Case B) "after revocation of probation." Because the court's oral pronouncement at sentencing was unambiguous, we will order the abstract of judgment modified to reflect that execution of sentencing for Case B was imposed "on unsuccessful termination of PRCS" under section 15(e) of the abstract of judgment form. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 183 [appellate court may order trial court to correct abstract of judgment that did not accurately reflect court's oral pronouncements].)

3.

The $71 local crime prevention fine assessed for the robbery case (Case A on the abstract of judgment) is unauthorized by law. Because Hoaglin was convicted of robbery (§ 211), the court was required to impose a $10 fine to fund local crime prevention efforts pursuant to section 1202.5, subdivision (a). That fine was subject to additional penalty assessments of $31 for a total of $41. (See §§ 1464, subd. (a)(1) [$10], 1465.7, subd. (a) [$2]; Gov. Code, §§ 70372, subd. (a)(1) [$5], 76000, subds. (a), (e) [$7], 76000.5, subd. (a)(1) [$2], 76104.6, subd. (a)(1) [$1], 76104.7, subd. (a) [$4]; see also *People v. Castellanos* (2009) 175 Cal.App.4th 1524, 1530.) We will order the abstract of judgment corrected. (See *People v. Dotson* (1997) 16 Cal.4th 547, 554, fn. 6 [unauthorized sentence may be corrected on appeal].)

DISPOSITION

The trial court is directed to correct the abstract of judgment as follows: (1) in form section 9(c) for Case A, change the $71 fine under section 1202.5 to $41; and (2) in form section 15, uncheck box (c) and delete "Case B" after the corresponding phrase,

"after revocation of probation"; and (3) in form section 15, check box (e) ("other") and specify "on unsuccessful termination of PRCS in Case B." As modified, the judgment is affirmed. The court shall transmit a corrected copy of the abstract of judgment to the Department of Corrections and Rehabilitation.

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BURNS, J.

WE CONCUR:

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JONES, P. J.

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SIMONS, J.